

UNITED STATES DISTRICT COURT FOR THE  
DISTRICT OF NEW HAMPSHIRE

Flagstar Bank, FSB

v.

Civil No. 09-mc-13-JM

FREESTAR Bank, N.A.

O R D E R

I have reviewed the in camera filings, the supplemental objection and the Knight deposition and exhibits. It is clear that the April 13<sup>th</sup> letter and enclosure are not related to legal advice concerning the name "FREESTAR" since the decision on the name was already made. In fact, reviewing that letter and the note on it, the attorney was simply passing along an idea for a logo based on one longer in use. That is business advice, not legal advice.

It is also clear that the September 4<sup>th</sup> emails are essentially a "cover letter" and a non-lawyer gathering of discovery documents. The September 5<sup>th</sup> email is not from or to counsel and does not contain any privileged information. For example, trademark searches are neither work product nor attorney-client privileged. Only the advice and legal

conclusions based on the searches are protected. See Klayman v. Freedom's Watch, Inc., 2007 WL 4414803 (S.D. Fla.); Cytosport, Inc. v. Nature's Best, Inc., 2007 WL 1040993 (E.D.Cal.). What Knights or Scott did by way of searches was not for or directed by counsel. The emails are not privileged.

The motion to quash subpoena (document no. 1) is denied. Defendant is ordered to produce the documents.

**SO ORDERED.**

  
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James R. Muirhead  
United States Magistrate Judge

Date: May 13, 2009

cc: Holly J. Kilibarda, Esq.  
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Stephen David Coppolo, Esq.  
William C. Saturley, Esq.